



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

In the Matter of:

Rulemaking to Consider Modification of
Regulations Establishing a Greenhouse
Gases Emission Performance Standard
For Baseload Generation of Local Publicly
Owned Electric Utilities

Docket No. 12-OIR-1

RULEMAKING WORKSHOP

REQUESTS FOR REPLY COMMENTS

Background

In 2007, the Energy Commission adopted a greenhouse gases emission performance standard (EPS) and related requirements under Senate Bill 1368 (Perata, Stats. 2006, Ch. 598, § 2) that applies to “covered procurements” entered into by local publicly owned electric utilities (POUs).¹ On January 12, 2012, the Energy Commission adopted an Order Instituting Rulemaking (OIR) to initiate a rulemaking proceeding to consider possible modifications to the EPS. The OIR focuses on whether to:

1. Establish a filing requirement for all POU investments in non-EPS compliant facilities regardless of whether the investment could be considered a covered procurement;
2. Establish criteria for, or further define, the term “covered procurement,” including specifying what is meant by “designed and intended to extend the life of one or more generating units by five years or more” and “routine maintenance”;
3. Make changes consistent with the requirements of Public Utilities Code section 8341, subdivision (f). This subdivision requires the Energy Commission, in a duly noticed public hearing and in consultation with the California Public Utilities Commission and the State Air Resources Board, to reevaluate and continue, modify, or replace the greenhouse gases emission performance standard when an enforceable greenhouse gases emissions limit applicable to POUs is established and in operation; and
4. Make any other changes to carry out the requirements of SB 1368.

¹ California Code of Regulations, title 20, sections 2900 through 2913.

On April 18, 2012, the Energy Commission conducted a public workshop regarding the OIR. Workshop participants included representatives from interested organizations and POU's. Commissioners Weisenmiller and Peterman and Commission staff facilitated the workshop.

On July 9, 2012, Chair and Lead Commissioner Weisenmiller issued Tentative Conclusions and Requests for Additional Information, asking parties to file comments by July 27, 2012, on the four OIR topics outline above. In addition, POU's were asked to provide additional information to allow for a better understanding of how investment decisions in non-EPS compliant facilities are made, including procedure and policies for approving expenditures and procedures for bringing particular investments to a governing body for approval.

Discussion

Based on the record developed to date in this proceeding, the Energy Commission believes it has sufficient information to develop final decisions on at least two of the four OIR topics outlined above, including:

- Whether to establish criteria or further define terms in the regulations; and
- Whether to make changes consistent with the requirements of Public Utilities Code section 8341, subdivision (f).

There are two remaining topics in the rulemaking that the Energy Commission will need to address, including:

- Whether to establish a filing or notification requirement for all POU investments in non-EPS compliant facilities; and
- Whether to make any other changes to the EPS to carry out the requirements of SB 1368.

In order to resolve the two remaining issues, the Energy Commission believes it is important to provide an opportunity for parties to submit reply comments in response to the July 27, 2012 comments filed by other parties. In addition, there was a filing docketed by Natural Resources Defense Council (NRDC) & Sierra Club on August 23, 2012, to which the Energy Commission believes parties should also have an opportunity to respond. The following discussion frames the issues on which the Energy Commission seeks reply comments and further input.

Whether to establish a filing requirement for all POU investments in non-EPS compliant facilities regardless of whether the investment could be considered a covered procurement.

Under the existing regulations, POU's must submit documentation that would allow the Energy Commission to evaluate whether a covered procurement complies with the

EPS.² POU's can satisfy these noticing requirements by providing the uniform resource locator (URL) that links to the required information.

If there is uncertainty about whether a particular investment is a covered procurement, POU's may request an Energy Commission determination on whether a prospective procurement would extend the life of a powerplant by five years, constitute routine maintenance, or comply with the EPS.³

Under current provisions, whenever a POU governing body deliberates on a covered procurement POU's are required to post specified notices in accordance with the Brown Act.⁴ In addition, POU's must make public the information and supporting documents provided to the governing bodies for their deliberations.

As generally described by the POU's in the April 28, 2012 Workshop and in their July 27, 2012 comments, their decision-making processes for covered procurements are conducted in a manner consistent with the Brown Act. The POU's note that they perform their legal responsibilities in full view of the public, and the decision makers are directly accountable to those that appoint or elect them.

As stated in the Tentative Decision, while these POU decision-making processes are consistent with the EPS, they arguably inhibit public scrutiny and review of investment decisions. As a result, it is reasonable and appropriate to require greater transparency regarding POU investments (including those solely for routine maintenance).⁵ Consequently, the issue currently before the Energy Commission is how to achieve greater transparency without imposing onerous financial and administrative burdens on POU's.

In their comments, NRDC & Sierra Club put forward a proposal regarding notification requirements for all expenditures on non-EPS compliant facilities.⁶ They recommend that URLs for the agenda and supporting documentation for all expenditures on non-compliant facilities – whether believed to be a covered procurement or not – deliberated by the POU's governing body should be provided to the Energy Commission within the time frame set forth under the Brown Act. NRDC & Sierra Club also suggest that the Energy Commission ensure that relevant service lists are simultaneously informed of POU activity and that URL links to POU disclosures are posted on a publicly available Energy Commission website.

² California Code of Regulations, Title 20, §§ 2909, 2910.

³ California Code of Regulations, Title 20, §§ 2907.

⁴ Government Code section 54950 et seq.

⁵ California Energy Commission, Tentative Conclusions and Request for Additional Information, Docket # 12-OIR-1, July 9, 2012, p. 3.

⁶ Joint Comments of the NRDC and the Sierra Club in Response to the Energy Commission's Notice of Rulemaking Workshop, at 1(a) and (b).

NRDC & Sierra Club suggest that the Energy Commission require notice be posted and available as soon as the relevant information is available and with sufficient notice to ensure public stakeholders are able to participate. In the case of agendas and agenda descriptions for public meetings, under Brown Act requirements, NRDC & Sierra Club acknowledge this may be 72 hours in advance of that meeting. In other cases, they suggest that information should be made available sooner.

NRDC & Sierra Club recommend that all documents or information needed to allow for an informed understanding of POU investments in non-EPS compliant plants be made available through the notification methods detailed above. NRDC & Sierra suggest to ease potential administrative burdens, that a standard could be established such that expenditures under a threshold value, such as \$50,000, need not be disclosed.

The Energy Commission seeks input on the elements of the NRDC & Sierra Club proposal outlined above, plus any other related details contained in their July 27, 2012 comment, including the adequacy of the utility information that is made available.

Whether to make any other changes to the EPS carry out the requirements of SB 1368.

In the Tentative Decision, the Energy Commission noted that some parties had expressed an interest in revising the current greenhouse gases EPS, which is currently set at 1100 pounds of carbon dioxide per megawatt hour of electricity (lbsCO₂/MWh) and requested comments on this. In their July 27, 2012 comments, NRDC & Sierra Club state that the analysis they submitted demonstrates that an EPS of 825-850 lbs/MWh, with potentially a higher EPS for smaller facilities, is feasible and economic today. NRDC & Sierra Club believe the current EPS is not sufficiently stringent to require the use of the most efficient and least polluting baseload fossil-fueled technology commonly available today – high efficiency natural gas combined-cycle (NGCC).

The Energy Commission believes it important to give parties an opportunity to respond to the NRDC & Sierra Club proposal to lower the EPS and the technical information they have provided on this subject. The Energy Commission notes that NRDC & Sierra Club rely on a national database to support their recommended EPS level. Although this data includes selective catalytic reduction in some cases, it does not account for corresponding allowable emission of NO_x and ammonia slip, which apply in California. The Energy Commission seeks input on this and any other adjustments that might be necessary to reflect California specific conditions.

Given that the EPS applies to natural gas plants that are designed and intended to operate as baseload facilities, the Energy Commission seeks input on how many of California's natural gas fired power plants would be affected by a lower EPS, such as in the range NRDC & Sierra Club have suggested. In addition, the Energy Commission is interested in receiving input on the extent to which a lower EPS may impact the design or ability of natural gas power plants to operate more flexibly for integrating renewable resources, since the cycling of these plants entails lower efficiencies and requires fast

ramp capabilities, and thereby a potential increase in emissions. The Energy Commission is interested in any other information parties would like to provide regarding the possibility of lowering of the EPS.

Response to information docketed by NRDC related to San Juan Generating Station.

In addition to the two issues outlined above, on August 23, 2012, NRDC & Sierra Club filed documents in this proceeding relating to M-S-R's intent to pay expenditures relating to federally mandated selective catalytic reduction investment in Unit 4 of the San Juan Generating Stations. Parties may also file reply comments addressing this information.

Next Steps

The Lead Commissioner for this rulemaking proceeding invites reply comments and input on the issues discussed above.

File any such comments and requested information with the Energy Commission Dockets Unit by 4:30 p.m. on Friday, September 14, 2012. Include Docket Number "12-OIR-1" in the subject line or first paragraph of your comments.

You may hand deliver or mail comments to:

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 12-OIR-1
1516 Ninth Street
Sacramento, CA 95814-5512

Alternatively, you may attach your comments to an e-mail and submit the e-mail to the Dockets Unit at docket@energy.ca.gov. E-mail attachments should be in Microsoft Word format or in portable document format (PDF).

All written material relating to the rulemaking proceeding will be filed with the Dockets Unit and become part of the public record.

Public Adviser and Public Participation

The Energy Commission's Public Adviser's Office provides the public assistance in participating in Energy Commission activities. If you want information on how to participate in this forum, please contact the Public Adviser's Office at (916) 654-4489 or 800-822-6228 or e-mail at: publicadviser@energy.ca.gov.

Information

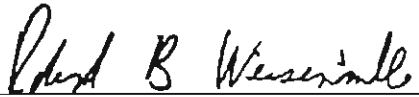
If you have a disability and need assistance to participate in this event, contact Lourdes Quiroz no less than five days prior to the meeting at (916) 654-5146 or e-mail:

lou.quiroz@energy.ca.gov.

Please direct all news media inquiries to the Media and Public Communications Office at (916) 654-4989, or by e-mail at: mediaoffice@energy.ca.gov.

If you have questions on the technical subject matter of this meeting, please contact Sekita Grant, Advisor to Chair Weisenmiller, at (916) 651-0460, or by e-mail at: sekita.grant@energy.ca.gov.

Dated: August 31, 2012, at Sacramento, California.



ROBERT B. WEISENMILLER
Chair and Lead Commissioner
12-OIR-1 Rulemaking